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File No. O. Village Panchayat/45
Legal Department
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Subject:— Opinions under the Bombay Village Panchayats Act, 1933.

69-A

File No. O. Village Panchayat/45

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C O N T E N T S.

Legal Department File No. J. Village Panchayat / 45.

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It is proposed to establish a Village Panchayat at Patdi, a Political Inam village in Viramgam taluka of Ahmedabad district. The Inamdar of the village is opposed to the proposal on the ground that he has proprietary rights in the soil of the Inam village and that the establishment of a village panchayat would involve interference with his rights in the soil. He contends: "As the village of Patdi is a Political Inam the roads, drains, wells bunds vest in the holder of the village i.e. the Chief and as such any repairs are required or a new work is to be done it has always been done by the State and at the State expense. If the Panchayat has to do any such work it has to obtain his consent as provided in section 26 of the Act and it is quite possible that the Panchayat cannot expect to get such consent from him when almost all requisite roads bunds etc. have been provided and maintained regularly by the State. Thus x there will be no scope for the Panchayat to undertake any kind of work. (See p. 351 ante). The R.L.A. is requested to advise on the particular issue of the practical application of the Village Panchayat Act as regards classes of property vesting in the Panchayat under the Law before proceeding further.

2. As regards the property which vests in the Panchayat the Panchayat would certainly be able to exercise over such property all the powers conferred by section 2(of the Bombay Village Panchayats Act, 1933. It is not

necessary however that the property should vest in the Panchayat before the Panchayat is enabled to exercise those powers. Provided the roads, drains, bunds, tanks and wells etc. are public, the Panchayat can, subject to the need of consent in certain cases, exercise the powers conferred by section 26, no matter in whom the roads, drains etc. vest. If they vest however in a public authority, the permission of such authority must be obtained before certain of the powers under section 26 are exercised. The two chief questions before in this case appear to be - (1) Do the public roads, drains etc. vest in the Chief of Patdi; (2) if they do, in the chief a public authority for the purposes of the proviso to sub-section (1) of section 26 ?

3. The two vesting sections in the Bombay Village Panchayats Act, 1933, are sections 29 and 30. The first enables the Panchayat to acquire property. The second provides that the Local Board may transfer property vesting in it to the Panchayat and thereafter such property shall vest in the Panchayat. This section also, provides that every work constructed by the Panchayat out of the village funds shall vest in such panchayat. The public roads, drains etc. in the village of Patdi will not therefore vest in the Panchayat unless they already vest in the Local Board. Presumbly, they do not vest in the Local Board. Therefore the constitution of a Panchayat will not result in the ownership of such

property being transferred from the chief of Patdi or from anyone else to the Panchayat. They will still vest in the person in whom they vested before the constitution of the Panchayat. It is impossible to say on the information supplied drains vest in the Chief. Certain of the roads may have existed before the village was given as inam to the Chief and the vesting of such roads may be different from the vesting of those roads which have been built and maintained by the Inamdar himself. However, it is inadvisable on the present information to give a definite opinion on this point, and it seems unnecessary to do so for the disposal of this case.

4. The second point is whether the chief is a public authority for the purposes of section 26. If he is not a public authority, then the Panchayat would be able to exercise its powers over public roads etc. vesting in him, even without his permission. The term 'public authority' is not defined in the village Panchayats Act. It is defined in Indian Tolls (Army) Act, 1901. But that is a special definition for the purposes of that Act and would not apply to the Bombay Village Panchayats Act. It is not clear what is meant by 'public authority' in section 26 of the Panchayat Act. The Chief and his State are obviously not "Local authorities" within the meaning of that term as defined in section 3 of the Bombay General Clauses Act, 1904. 'public authority' however is a wider term than 'local authority' and I think that the Chief would be a public

authority for the purposes of section 26 and his consent would be necessary before public roads vesting in him could be maintained or repaired. Even without such permission the Panchayat would be able to exercise some powers and perform some duties under section 26, e.g. it would still presumably be able to make arrangements for lighting the village, and controlling fairs and bazars. But whether the Panchayat would do much public good without the Chief's consent under section 26 is questionable.

5. The question referred is not of much practical value. Clearly the Village Panchayats Act, 1933, applies to the village of Patdi and as the Act now stands it is obligatory on Government to constitute a panchayat, whether or not a panchayat is a desirable institution in this village. The only alternative is to amend the Act in order to give Government power to exempt particular villages from the operation of the Act.

F.C. Signed by R.D.A.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 204, dated the 8th January 1945.

GJT. 27.6. 4 c.

Office of the R.L.A.

Since the President of the district local board did call a meeting in the present case as provided in sub-section (1) of section 17 of the Bombay Village Panchayats Act, 1933 the second paragraph of the proviso to sub-section (2) will have no application; there is however no legal objection to asking the President of the district local board to call a fresh meeting under section 17(1) and in case of his default the Collector can exercise his powers under the second paragraph of the proviso to section 17(2).

On calling the second meeting either by the President or by the Collector as stated above, if the members still fail to attend the meeting, the Collector can take office and proceed to make fresh appointments under section 6(3): see R.L.A.'s opinion No. 3859, dated the 30th April 1941.

Sd: P.N.M.

7/5/45.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 3583, dated the 7th May 1945.

Office of the R.L.A.

The Village Panchayat, Naregal, proposes to levy a "professional" tax on cattle brokers who recover brokerage on cattle sales in the weekly cattle bazar held in the village. This tax it proposes to levy under sub-section (2) of section 89 of the Bombay Village Panchayats Act, 1933. The Commissioner, S.D., wishes to know whether such a tax would be legal. He also anticipates complications and difficulties if the District Local Board, which is also competent to levy the tax, decides to do so in future.

2. The occupation of cattle broker may bot strictly be regarded as a profession. But item 46 in List II of the Provincial Legislative List in the 7th Schedule to the Government of India Act, 1935, authorises a tax on trades, callings and employments as well as a tax on professions. This item therefore is clear authority to authorise the Provincial Government to impose a tax on cattle brokers. Correspondingly under section 89 (2) (vii) of the Bombay Village Panchayats Act, 1933, it would be clear authority to a panchayat for the imposition of such a tax, provided the district local board approves and the Provincial Government sanctions the tax.

3. The R.L.A.'s opinion to which the Commi-

ssioner's letter at p. 23 refers is apparently R.L.A.'s No. 7 dated 4th January 1924 at p. 82 of Supplement II to the Digest of Opinions. That opinion has been wrongly summarised in the Supplement. A copy of the opinion is sent herewith. There is no doubt that a panchayat has the power to levy a tax on a profession or calling or occupation subject to the approval by the Local Board and sanction by the Provincial Government and subject to the monetary limit imposed by section 142A of the Government of India Act, 1935

4. However, the proposed rules imposing this tax do not provide, for ~~for~~ example, that all cattle brokers in the village of Naregal shall pay a tax. The substance of the rules in that no cattle broker shall do business in the Naregal weekly cattle bazar without first obtaining a permit. This tax therefore seems rather a measure for controlling the cattle market than a tax on the occupation of cattle broker. The question therefore arises whether a license fee or permit fee as proposed by the rules would be legal. The control of bazars is one of the duties of a panchayat - section 26 (1) (h) of the Act. It is however doubtful whether that by itself would empower the imposition of a license fee when such a power is not specifically given by section 89 of the Act. However, markets and fairs are within the legislative power of the Provincial Government item 27 of List II

of the Provincial Legislative List in the 7th Schedule to the Government of India Act, 1935; and the Provincial Government may levy fees in respect of any of the matters in that List - item 54 of the said List II. Hence even if this tax is regarded as a license fee or permit fee it would still come within the scope of section 89(2) (vii) of the Bombay Village Panchayats Act. However if it is as a license fee or permit fee that it comes within that clause it ought to approximate more closely to the actual cost of controlling the market by means of permits. The Commissioner proposes to have the tax reduced and if this is done there would be no objection to the legality of such a tax.

5. There might be objection on the score of policy or on account of administrative complications if the District Local Board also decided to tax cattle brokers. But that is a matter for G.D. to consider and it does not affect the legality of the proposed tax.

Sd: P.N.M.
6/6/45.

Remembrancer of Legal Affairs.

U.R. to G.D.1, No. 4328, dated the 7th June 1945.

The number of candidates qualified to be chosen to fill the reserved seats for Muslims being i excess of the number of such seats in the present case votes were required to be taken for filling those reserved as well as unreserved seats under rule 8(7) of the Bombay Village Panchayats Elections Rules.] The rules provide for election by a joint electorate both to the reserved and unreserved seats, the method of election being either by show of hands or by ballot.' Rule 12(26) prescribes the procedure for declaring the results of election to the seats reserved and unreserved after the counting of votes.' Neither the Act nor the rules thereunder provide for declaring results of election where no votes at all the recorded.' In the absence of any statutory authority it would not be permissible to declare elected the two Mahomedan candidates who put in their nominations earlier than the third as suggested by the Commissioner.] Nor would it be permissible to determine by lot which two of the three Mahomedan candidates should be declared elected as suggested by G.D. Since no votes were recorded the election would be deemed to have not resulted in the return of qualified persons to fill the two seats reserved for Muslims and six unreserved seats within the meaning of section 6(3) of the Bombay

Village Panchayats Act, 1933. There is no reason why the scope of section 6(3) should be so restricted in its operation as suggested by G.D. in para. 7 of its office note at p. 3 ante.

Sd: P.N.M.

19/6/45.

Remembrancer of Legal Affairs.

U.R. to G.D., No. 4613 dated the 20th June 1945.

GJT. 27.6. 4 cl.

Office of the R.I.A.:

The view taken in G.D. office note at p.3 ante on both points is correct.

Section 6(1) of the Bombay Village Panchayats Act, 1933 as amended by Bombay Act II of 1945, having no retrospective effect, does not apply to the Panchayats constituted before the Bombay Act II of 1945 came into force. Under the Act it is not necessary to publish the names of ex-officio members.

Sd/- [illegible]
11/8/45.
Remembrancer of Legal Affairs.

U.N. to G.D. No. 6030, dated the 14th August, 1945

GJT. 27.6. 4

Office of the R.L.A.

The view taken by G.D. on question (1) at p. 3 ante is correct. The server's memorandum in the bill book that the bill was duly presented would ordinarily be sufficient evidence to prove proper service; but in case of doubt the server should be asked to make an affidavit.

Section 91(2A) of the Bombay Village Panchayats Act, 1933 is similar to section 192(1) of the Bombay Municipal Boroughs Act, 1925; and no municipality appears to have felt any difficulty in proving proper service. Consequently it does not appear necessary for Government to frame rules prescribing the procedure for service of notice etc. under the Bombay Village Panchayats Act. If however Government desires so to do, clause (a) of section 108 (1) can be invoked.

Sd/- (illegible)

22/8/45.

Remembrancer of Legal Affairs.

U.O. to G.D. No. 6256 dated 24th August 1945.

GJT. 27.6. 4 c.

Office of the R.L.A.

The question for R.L.A.'s consideration is whether under the proviso to sub-section (1) of section 6 of the Bombay Village Panchayats Act, 1933, Government can reserve seats for the backward tribes in any village panchayat even when such tribes form a majority in the village.

2. Sub-section (1) of section 6 of the Bombay Village Panchayats Act, 1933, provides that a village panchayat shall consist of officiating revenue and police patels and of such number of elected members, not less than seven or more than eleven in number, as the Collector, after consultation with the district local board, may determine. It further provides thus:

> "In any such panchayat such number of seats shall be reserved for the representatives of women, Muhammadans, Harijans or backward tribes as may be prescribed by the Provincial Government under clause (b) of sub-section (1) of section 108:
>
> Provided that no such seat shall be reserve for the representatives of Muhammadans, Harijans backward tribes in any panchayat unless the Provincial Government is of the opinion that reservation of such seats is necessary having regard to the populatio of such community, class or tribe in the

village.

The words "having regard to the population of such community, class or tribe in the village" imply that power is given to the Provincial Government to safeguard the interests of such community, class or tribe only in those cases where Government is of opinion that though such community, class or tribe forms an important minority, it is unable to get its due share of representation in election ~~in election~~ and therefore reservation of seats is necessary. Where such community, class or tribe constitutes a majority in the village, it would normally be in a position to return its representatives, and consequently reservation of seats for such community, class or tribe would not be consistent with the provisions of section 6(1) of the Act. The view expressed by the U.S., G.D., is not correct.

Sd: ——

28/10/45.

Remembrancer of Legal Affairs.

U.S. to G.D., No. 3120, dated the 31st October 1945.

GJT. 27.6. 4 c.

Office of the R.L.A.

The Secretary, Home Department considers that the Village Bench should be withdrawn from Chembur. The K.L.A. is requested to advise.

2. Under section 37(1) of the Bombay Village Panchayats Act, 1933, as it stood before it was amended by Act XVIII of 1939, the constitution of a village bench in any village was within the discretion of Government. Since then the position has changed. Under sub-section (1) of section 37 as amended the constitution of a village bench appears to be obligatory, although under sub-section (2) Government can limit the judicial powers thereof vested under the Act, and under the proviso thereto Government may be notification in the Official Gazette withdraw all or any of the judicial powers conferred on a village bench if in the opinion of Government, such bench has been incompetent in the exercise of or has been guilty of the abuse of the said powers. Consequently the proposal of the Secretary, Home Department would not be legally feasible.

Sd/- ———

19/05/45.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 17801, dated the 20th October, 1945.

GJT. 27.6. 4 c.

Office of the R.L.A.

One of the eleven seats in the Village Panchayat of Kakol in the Dharwar District is reserved for Backward Tribes. In the general election to the Panchayat recently held only one nomination paper for the reserved seat was received from the candidate Gutteppa Hornappa Shivannavar and as there was no contest he was declared duly elected. It was subsequently discovered that this candidate did not belong to the Backward Tribes but to the Scheduled Castle. Since he was not qualified to be chosen for the seat reserved for the Backward Tribes the Collector declared his election invalid under section 9 and ordered a fresh election under section 10 of the Bombay Village Panchayats Act, 1933. The President of the District Local Board, Dharwar, objects to a fresh election being held under section 10 on the ground that the facts of the case attract the provisions of section 6(3) of the Act under which the District Local Board is competent to fill up a vacancy by appointment. The Commissioner, S.D. is of opinion that the Collector's Order is correct in so far as it relates to the declaration that the election of Shivannavar is invalid but he proceeds to observe that

after having declared the election invalid the Collector should have asked the District Local Board to fill the vacancy under section 6(3) by appointing a suitable person belonging to the Backward Tribes. The question referred to the R.L.A. for advice is whether the view taken by the Commissioner, S.D. is correct.

2. It is not in dispute that Gutteppa Honnappa Shivannavar, a member of the Scheduled Caste, was not qualified to fill the seat reserved for the Backward Tribes (see Rule 7 of the Bombay Village Panchayats Election Rules). His election for that seat was clearly invalid. Section 9 of the Bombay Village Panchayats Act provides inter alia that if the Collector, after such enquiry as he considers necessary, is satisfied that any irregularity has been committed in connection with the election of any member and that such irregularity has materially affected the result of the election the Collector may declare the election of such member to be invalid and such declaration shall be final. Shivannavar's election was clearly due to an irregularity on the part of the Returning Officer in accepting his nomination from without satisfying himself whether Shivannavar was entitled to stand for the seat reserved for the Backward Tribes. The Collector was accordingly justified in declaring Shivannavar's election to be invalid under the provisions of section 9. Section 10

lays down that if the Collector declares the election of any member invalid a fresh election for the vacancy so caused shall be held in accordance with the provisions of this Act. Having declared Shivannavar's election invalid under section 9 the Collector was justified in ordering a fresh election under section 10. I do not think that the application of section 6(3) would have been particularly appropriate to the facts of the present case. That section contemplates appointment by the District Local Board within four weeks from the date on which the names of elected members are published in the prescribed manner by the Collector only if the election does not result in the return of the required number of qualified persons willing to take office. In the present case, it cannot be said that the election did not result in the return of the required number of candidates and the election must be deemed to be good until set aside as invalid. I am therefore of opinion that the view taken by the Commissioner, S.D. is not correct.

Sd/- .....
15/12/45.

Remembrancer of Legal Affairs.

U.H. to G.D., No. 9451, dated 17th December 1945.

GJT. 27.6. 4 c.